



BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION
Advisory Opinion
No. 09-09-011A

On September 28, 2009, the Ethics Commission issued an advisory opinion to a member of the Board of Appeals.¹ The member, who is an attorney in private practice in Montgomery County, represented an entity that participated in the County's Tuition Assistance Program. The Commission advised the member that the member's representation of the client in connection with matters involving the Tuition Assistance Program would violate Section 2-109 of the Montgomery County Code. The Commission explained that Section 2-109 prohibits a member of the Board of Appeals from acting as an attorney for a client in a matter connected with that client's business dealings with the County.

The member has now asked the Commission for a waiver under Section 19A-8 to permit the member to represent the client in a matter connected to the County's Tuition Assistance Program. The Commission must deny the waiver request, because the Commission is without authority to waive the provisions of Section 2-109.

Although Section 19A-7 authorizes the Commission to provide an advisory opinion on the application of Section 2-109, Section 19A-8, which empowers the Commission to grant a waiver, does not authorize the Commission to grant a waiver of the prohibitions of Section 2-109. Section 19A-7 provides:

Any person subject to this Chapter or Sections 2-109, 11B-51 or 11B-52(a) may ask the Commission for an advisory opinion on the meaning or application of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) to that person. (Emphasis added)

Section 19A-8, on the other hand, provides,

After receiving a written request, the Commission may grant to a public employee or class of public employees a waiver of the prohibitions of this Chapter and Sections 11B-51 and 11B-52(a) if it finds that:

¹ See, Advisory Opinion No. 09-09-011.

1. the best interest of the County would be served by granting the waiver;
2. the importance to the County of a public employee or class of employees performing officials duties outweighs the actual or potential harm of any conflict of interest; and
3. granting the waiver will not give the public employee or class of employees an unfair economic advantage over other public employees or members of the public.

Other provisions of Section 19A-8 establish different criteria for granting waivers of Sections 19A-12(b) and 19A-13. The Commission finds that because Section 19A-8 does not include a reference to Section 2-109, the Commission lacks the authority to grant a waiver from the prohibitions of Section 2-109. Accordingly, the Commission must deny the waiver request to relieve a member of the Board of Appeals from the prohibitions of Section 2-109.

MONTGOMERY COUNTY ETHICS
COMMISSION



November 13, 2009

Antar C. Johnson, Chair